

REMARKS

In the outstanding Office Action, all pending claims, i.e., claims 1-3 and 6-10 were subjected to a restriction requirement. By this response, a provisional election to the restriction requirement is made with traverse.

RESTRICTION AND ELECTION REQUIREMENT SUMMARY

The Examiner has required restriction based on PCT Rule 13.1, 13.2 and Annex B part 1(b) together with 37 CFR 1.475 and 1.499 for lacking unity of invention in light of the Examiner's assertion that claims 1-3 and 6-10 are drawn to more than one inventive concept, i.e. the requirement of unity of invention. The Examiner further alleges that the claims are not linked as to form a single general inventive concept as provided for by PCT Rule 13.1, because "they lack the same or corresponding special technical features that define a contribution over the prior art." The Examiner has identified the technical feature of the instant claims to be "a 5-membered heterocyclic imidazole core of formula 1 [with various groups, which are attached directly or indirectly to the core formula]". The inventions are set forth in the Office Action as follows:

- Group I: Claims 1-2 drawn to a compound of formula 1 classified in class 548 and numerous subclasses.
- Group II: Claims 3 drawn to a process for preparing of a compound classified in class 548 and numerous subclasses.
- Group III: Claims 6-7 drawn to another process for preparing of a compound classified in class 548 and numerous subclasses.

Group IV: Claims 8-10 drawn to a composition / method of use of a compound classified in class 514 and several subclasses.

RESPONSE

Applicants provisionally elect claims 1-2 drawn to a compound of formula 1.

Further, Applicants respectfully traverse the Examiner's restriction based upon the submission that the common technical feature of each of the invention groups is 3,4-dihydro-2-dialkoxy methyl-3-hydroxy-2-methyl-4-[N-(4-aryl)-N-(1H-imidazole-2-ylmethyl)amino]-2H-1-benzopyran.

The instant benzyopyran derivatives have dialkoxymethyl substituent as R₂ while the benzopyran derivatives taught in U.S. Patent No. 5,837,702 have methyl substituent as R₂.

Applicants further submit, as evidenced in "Experimental Example 7" beginning on page 64 of the as filed specification, that the compounds of the instant invention are more optimal for cardioprotectives by virtue of their weak vasodialation activity than those of the BMS-191095, i.e., the benzopyran derivative substituted with imidazole taught in U.S. Patent No. 5,837,702.

Additionally, the restriction requirement are further traversed because the Examiner omits "an appropriate explanation" as to the existence of a "serious burden" if restriction and election were not required. See MPEP 803. Regardless of any differences which may exist between the inventions set forth in the different groups, a complete and thorough search for the invention set forth in any one of the groups would require searching the art areas appropriate to the other groups. At the Examiner's disposal are powerful electronic search engines providing the Examiner with the ability to quickly and easily search all of the claims.

CONCLUSION

In light of the foregoing, Applicants respectfully request that the Examiner continue to conduct a substantive examination of the application. If the Examiner has any questions or comments regarding this matter, the Examiner is welcomed to contact the undersigned attorney at the below-listed number and address.

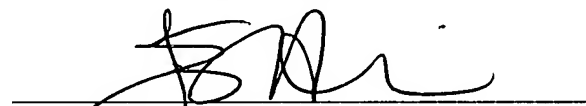
In the event this paper is not timely filed, Applicants petition for an appropriate further extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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